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In Propria Persona

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

TODD R. G. HILL, et al,

Plaintiffs

vs.

THE BOARD OF DIRECTORS, OFFICERS AND AGENTS AND INDIVIDUALS OF THE PEOPLES COLLEGE OF LAW, et al.,

Defendants.

CIVIL ACTION NO. 2:23-cv-01298-JLS-BFM

The Hon. Josephine L. Staton
Courtroom 8A, 8th Floor

Magistrate Judge Brianna Fuller Mircheff
Courtroom 780, 7th Floor

PLAINTIFF'S OBJECTION AND REPLY TO DOCKET 327: DEFENDANTS' OPPOSITION TO REQUEST TO FILE SURREPLY

NO ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

Cases

Rules

PLAINTIFF'S REPLY TO DOCKET 327: DEFENDANTS' OPPOSITION TO REQUEST TO FILE SURREPLY

TO THE HONORABLE COURT AND ALL PARTIES OF RECORD:

Plaintiff respectfully submits this reply to Defendants' Opposition (Docket 327), correcting misrepresentations and procedural inaccuracies therein.

Haight's characterization of Plaintiff's motion as a ten-page "surreply" directed at all Defendants is simply inaccurate. Plaintiff's motion (Docket 323) explicitly requests permission to file a surreply (Docket 323-1) to clarify recent procedural confusion and to "directly rebut new assertions introduced by" Defendants. That is the only purpose.

Plaintiff's response is narrowly tailored, does not relitigate Rule 12 arguments, and avoids piecemeal filings, aligning fully with Fed. R. Civ. P. 1's mandate of securing the just, speedy, and inexpensive determination of this action.

Docket 327 is premised on the assertion that Plaintiff's surreply improperly addresses all Defendants. That assertion is demonstrably false. The proposed filing (Docket 323-1), styled as "Plaintiff's Response to Defendants' Opposition to Plaintiff's Notice of Submission of Proposed Fifth Amended Complaint," is not a surreply to Haight's opposition alone, but a consolidated response to both Docket 319 (Spiro) and Docket 321 (Haight) in support of the Court's directive in Docket 311 and serves the interests of judicial efficiency by resolving procedural ambiguity and aiding the Court in assessing the curative scope of the proposed Fifth Amended Complaint.

Notably, this filing was not styled as a classic "surreply" under Fed. R. Civ. P. 12(b)(6) practice, but a clarification submitted in connection with, at time of submission, a pending Rule

15(a)(2)/Rule 59(e) motion, consistent with the procedural context explicitly created by the Court in Docket 311.

Far from prolonging litigation, Plaintiff's request consolidates the record, responds once to two procedurally inconsistent oppositions, and was necessitated not by Plaintiff's own motions, but by filings (Dkts. 319, 321) that, absent opportunity to respond, preempt normal briefing.

Defendants have replicated the same analytical error they accuse Plaintiff of committing: they confuse the merits of their own allegations of pleading deficiency with the procedural standards for leave to amend, and they attack the proposed surreply as if it were filed without permission, while failing to engage with the grounds and substantive reasons Plaintiff properly requested for leave. Defendants do not engage in proper briefing and endeavor to effect abject avoidance.

I. INTRODUCTION

As an initial matter, the record is unambiguous: Plaintiff's arguments and factual corrections within the surreply do not address or implicate Haight's filings or PCL's defenses under it's Rule 12(b)(6) motions; Haight's own prior motion (Docket 318) is not the subject of any new argument or rebuttal in the surreply.

Defendants' repeated accusations of procedural "gamesmanship" are not only unfounded but appear designed to deflect from their own failure to properly engage with the correct legal standard governing amendment under Fed. R. Civ. P. 15(a)(2), good-faith or applicable Ninth Circuit precedent(s). The assertions that Plaintiff's filing of a surreply and/or corrected proposed Fifth Amended Complaint reflects bad faith or improper strategy is wholly unsupported, particularly where

Plaintiff has transparently submitted the revised requests for leave, surreply and pleading precisely to moot any claim of impropriety or futility and thus preserve procedural clarity for the Court.

Defendants mischaracterize Plaintiff's filing of the Fifth Amended Complaint (5AC). Plaintiff has not filed the 5AC as an operative pleading, nor claimed the right to do so under Fed. R. Civ. P. 15(a)(1). Rather, Plaintiff submitted it in accordance with Rule 15(a)(2), attached to a timely motion for leave under Rule 59(e), and in furtherance of preserving the record for appellate review. The procedural rules and controlling Ninth Circuit authority allow such proposed amendments to be considered when deciding whether to alter or amend a judgment. See *Schreiber Distrib. Co. v. Serv-Well Furniture Co., Inc.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

II. THIS SHOULD NOT BE A QUESTION; THE RECORD MERITS CLARIFICATION, NOT OBSTRUCTION

The Court's order in Docket 311, though limited in language, effectively displaced the ordinary opposition-reply sequence by inviting amendment review before formal motion procedures were exhausted, thereby justifying clarifying response by Plaintiff.

While Plaintiff respectfully sought leave to file the clarifying response out of procedural caution, it bears emphasis that this should not be a contested issue at all. The clarification directly responds to a hybrid procedural posture created by the Court's own order (Dkt. 311) and Defendants' (in)formal oppositions. Denying clarification under these circumstances would elevate form over function and reward tactical confusion over transparent recordkeeping.

By inviting submission of a redlined amended complaint in Docket 311, and then accepting and docketing Dkts. 317 and 318 without objection, the Court implicitly opened the door to limited procedural clarification, particularly when Defendants filed solicited oppositions (statements of position at Dkts. 319 and 321) that deviated from standard Rule 12 or Rule 15 procedure.

Thus, Plaintiff's clarifying response:

a. Did not expand the scope of claims;

b. Did not introduce new legal theories;

c. And was a fair reply to procedural arguments Defendants themselves introduced outside the ordinary motion framework.

In that posture, Plaintiff's motion for leave (Docket 323) was a show of deference, not an admission that the filing was improper or unusual.

III. DEFENDANTS CONFLATE THE SUBSTANCE OF THEIR PRIOR 12(b)(6) ARGUMENTS WITH THE PROCEDURAL QUESTION AT HAND; THE SURRREPLY CLARIFIES, IT DOES NOT REARGUE

Defendants' opposition in Docket 327 makes the fundamental error of repackaging prior Rule 12(b)(6) arguments, including their own subjective view of the Fourth Amended Complaint's deficiencies, as grounds to oppose a narrow, clarifying filing. But this conflation misapprehends the purpose of Plaintiff's surreply and the procedural standard governing the request to file it.

The procedural question before the Court is not whether the Fifth Amended Complaint is sufficient under Rule 12(b)(6) because no such motion is currently pending. Neither is it whether the surreply successfully rebuts the arguments it seeks to respond to.

Rather, the issue is whether Plaintiff may respond to new and procedurally misleading objections raised in Defendants' filings following Docket 311, and whether the record should include the proposed surreply to ensure an accurate and efficient adjudication of the pending Rule 15 (and now ruled upon 59(e)) motion.

Plaintiff's proposed surreply (Docket 323-1) explicitly clarifies that Defendants are improperly treating the procedural posture as if a motion to dismiss were pending, when the real issue is whether amendment should be permitted. The surreply identifies and rebuts this exact error:

"[T]he defense oppositions conflate arguments on the merits under Rule 12(b)(6) with the procedural standard for leave to amend, and in doing so, they misstate both the burden and the operative standards under Rule 15 and Rule 59(e)."

This is a central clarification, not a new argument. The surreply was tailored to disentangle the confusion created by Spiro's and Haight's filings, which recycled 12(b)(6) dismissal points (e.g., "failure to state a claim," "futility") without recognizing that Plaintiff was not seeking to file a live complaint unilaterally, but rather seeking leave to amend under Rule 15.

IV. DEFENDANTS MISDIRECT THEIR ATTACK; THEIR OPPOSITION ADDRESSES THE SURRREPLY ITSELF, NOT THE BASIS FOR ALLOWING IT

Plaintiff objects to Docket 327 on the grounds that Haight Brown & Bonesteel LLP, counsel for the PCL Defendants, err procedurally by focusing their opposition on the contents of the surreply rather than the basis for allowing it to be filed. Under controlling Ninth Circuit authority, a court may grant leave to file a surreply where:

1. A party raises new issues or procedural objections in a reply or opposition (see *Edwards v. Marin Park*, 356 F.3d 1058, 1063–64 (9th Cir. 2004)),
2. Clarification is necessary to complete the record or prevent unfair prejudice, and
3. The Court explicitly invites further briefing or clarification, as occurred here in Docket 311.

Plaintiff's motion (Docket 323) plainly set forth these justifications. Yet Defendants fail to engage them. Instead, they direct their opposition toward the contents of the proposed surreply itself, treating it as if it were already filed, without squarely addressing the motion's limited procedural purpose.

This is procedural sleight of hand. **A party cannot oppose a motion for leave by attacking the document not yet filed as if it were improperly before the Court.** Such logic presumes the very

conclusion the Court has not yet reached: that leave will be denied. That circular reasoning should be rejected.

Under standard motion practice and governing federal procedure, parties with a direct interest in the underlying motion may oppose it. See *United States v. Harding*, 273 F. Supp. 2d 411, 427 (S.D.N.Y. 2003). That said, here, Haight's opposition constitutes a procedural intrusion in that it misrepresents the target and purpose of Plaintiff's proposed surreply and the actual filing subject to opposition given the procedural context.

V. PLAINTIFF HAS NOT CIRCUMVENTED PROCEDURE BUT FOLLOWED IT WITH PRECISION, AND DEFENDANTS DISTORT THE LEGAL STANDARD UNDER RULE 15

Defendants' assertion that Plaintiff is "circumventing" rulings by "continually responding to motions to dismiss through the filing of new amended complaints" is both factually misleading and legally untenable. The record shows the opposite: Plaintiff has repeatedly followed the procedural requirements imposed by the Court, filed amendments only with permission or in direct response to invitations for clarification, and submitted proposed amendments to avoid precisely the kind of endless litigation Defendants now accuse him of perpetuating.

1. RULE 15(A)(2) AND *FOMAN V. DAVIS* COMPEL A PRESUMPTION OF LEAVE, NOT FINALITY

The Ninth Circuit has long held that leave to amend under Rule 15(a)(2) must be "freely given when justice so requires." (*Foman v. Davis*, 371 U.S. 178, 182 (1962); *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003)). The burden falls on the party opposing amendment, **not** the movant, to demonstrate that leave should be denied based on futility, bad faith, or undue delay.

Defendants invert this standard. They insist that Plaintiff bears the burden of showing that the Fifth Amended Complaint ("5AC") cures "all" alleged defects before even being allowed to amend, an approach flatly rejected in *Lopez v. Smith*, 203 F.3d 1122, 1130–31 (9th Cir. 2000) (en banc).

This is not a request for serial amendment submitted in bad faith. Plaintiff filed the 5AC:

a. In the context of rebutting defendant's direct allegations in their own 12(b)(6) motions and in strict compliance with Docket 311 (the Court's minute order inviting clarification);

b. With a redline and declaration (Dkts. 317–318, 315);

c. In accordance with a procedural motion under Rule 15/59(e) (Dkt. 310).

There is no violation of Rule 15, and no effort to "evade" judicial rulings. Rather, Plaintiff complied with the Court's instruction to provide clarity and focus in the context of Defendant's express desire to preempt merits review.

2. PLAINTIFF IS NOT EVADING DISMISSAL AND INVITING RESOLUTION ON THE MERITS

The irony of Defendants' argument is striking: while accusing Plaintiff of evading judicial scrutiny, they resist every opportunity to meet clarified allegations head-on. If Defendants truly seek finality, they should welcome the 5AC, file their Rule 12(b)(6) motions, and address the restructured allegations on the merits. Instead, they demand that the Court rule on **outdated, superseded pleadings**, all while blocking Plaintiff's good-faith efforts to refine and clarify the operative complaint.

3. THE FIFTH AMENDED COMPLAINT IS SUBSTANTIVELY AND STRUCTURALLY RESPONSIVE

The defendants' claim that Plaintiff has not shown how the 5AC cures prior deficiencies is contradicted by the record:

1. The 5AC directly addresses Defendant's alleged concerns about complexity and redundancy.
2. It provides factual restructuring and realignment claimed lacking by Defendants.
3. It includes material supported by judicially noticeable documents filed under Dkts. 197 and 199, amongst others, which Defendants have not squarely addressed.

Moreover, Plaintiff filed a redline version showing all changes, a transparent act inconsistent with the claim that Plaintiff is using "vague assertions" to hide deficiencies, in direct response to the Court's request.

The 5AC is not a delay tactic. It is a procedural and substantive consolidation that is *precisely* the kind of amendment Rule 15 is designed to encourage when claims are evolving in light of successive Rule 12 motions.

4. FINALITY IS NOT AN INDEPENDENT BASIS TO DENY LEAVE

The Ninth Circuit has rejected arguments that "finality" justifies denying leave to amend, absent a showing of prejudice or futility. In *Desertrain v. City of Los Angeles*, 754 F.3d 1147 (9th Cir. 2014), the court reversed the denial of leave where the plaintiff attempted to clarify constitutional claims after successive amendments. "Multiple amendments," it held, "do not, without more, justify denying leave." (*Id.*, at 1154–55).

Haight offers no authority justifying denial based solely on the number of amendments. They cite no binding precedent holding that amendment should be denied merely because motions are pending or because a party prefers finality over adjudication.

VI. DEFENDANTS MISCHARACTERIZE PLAINTIFF'S SURREPLY AS REPETITIVE

Defendants assert Plaintiff's proposed surreply merely reiterates previously argued points concerning incorporation by reference, streamlined amendments, and the absence of undue delay or bad faith. This characterization is incorrect and misleading. Plaintiff's surreply does not simply rehash prior arguments; rather, it directly responds to new and specific procedural and factual misrepresentations first raised in Defendants' recent filings (Dockets 319 and 321) in specific context. Under Ninth Circuit precedent, surreplies are appropriate and necessary to address such newly raised issues. (See *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996) (holding that "new evidence in reply may not be considered without giving the non-movant an opportunity to respond".)

VII. DEFENDANTS' ALLEGATIONS OF "GAMESMANSHIP" ARE MISPLACED AND DISTRACT FROM THEIR OWN FAILURE AND DUTY TO FAIRLY BRIEF THE CONTROLLING STANDARD

As stated above, Plaintiff has clearly stated the standard for leave to file a surreply. Plaintiff's motion (Docket 323) plainly set forth these justifications.

Contrary to Defendants' framing, Plaintiff's overall approach reflects procedural diligence, not gamesmanship. Notably, the Plaintiff issued the corrected proposed Fifth Amended Complaint following the Court's directive in Docket 311, and specifically in response to or anticipation of any futility objections Defendants might raise. This is exactly the conduct contemplated in *In re Klin v. Cloudera, Inc.*, No. 22-16807 (9th Cir. 2024), where the Ninth Circuit held that amendment is futile only where the plaintiff has failed to identify specific additional facts that could cure the alleged deficiencies. In contrast to the *Klin* plaintiff, who failed to propose any factual additions or clarifications at all, Plaintiff here has submitted a revised pleading that directly addresses the purported defects. Thus, Plaintiff's actions exemplify compliance with the Ninth Circuit's guidance, not evasion.

Indeed, it is Defendants who have engaged in a form of litigation misdirection by omitting any reference to *In re Klin* or the controlling Ninth Circuit standards that govern leave to amend. Their opposition brief (Docket 327) fails to articulate the actual test for futility or cite a single case clarifying when amendment should be denied on futility grounds. Instead, Defendants conflate procedural timing with futility and paint Plaintiff's proactive corrections as improper, when they in fact demonstrate the very kind of curative effort the law encourages.

If anything, Defendants' refusal to address the content of the Fifth Amended Complaint, choosing instead to resort to vague claims of redundancy and bad faith, exposes the weakness of their position. Accusations of gamesmanship cannot substitute for a legal analysis. Under Rule 15(a)(2), leave to amend shall be freely given "when justice so requires," and under *Foman v. Davis*, 371 U.S. 178 (1962), the only legitimate grounds for denial are undue delay, bad faith, repeated failure to cure deficiencies, undue prejudice, or futility. Defendants assert none of these credibly, and their failure to engage the correct legal framework is telling.

In short, Plaintiff's conduct has been procedurally appropriate and strategically measured. Plaintiff has not filed serial amendments to delay adjudication, but has instead sought to clarify and cure alleged issues before the Court rules, an act of efficiency, not obstruction. Defendants' rhetoric cannot override the governing legal standards, and their omission of binding precedent, particularly *In re Klin*, only reinforces the necessity of granting leave in the interest of fairness, accuracy, and judicial economy.

VIII. HAIGHT'S CONDUCT IS TACTICALLY MOTIVATED, NOT SUBSTANTIVELY GROUNDED

The firm's unsolicited opposition reflects a pattern of coordinated obstruction, designed to shift the narrative and sidestep merits review:

1. Haight attempts to co-opt the record by suggesting that Plaintiff's conduct, here the filing of a corrected proposed amended complaint in line with Docket 311, is somehow improper;
2. Yet they do not engage with any factual predicate or legal analysis supporting this claim.
3. This strongly suggests Haight's participation is designed to amplify rhetorical objections rather than advance any direct or legally viable defense of their own.

This tactic mirrors that which Plaintiff argues in Docket 325: Defendants "have strategically manipulated procedural ambiguity to evade merits review"

IX. CONCLUSION

To deny the surreply would be to accept one-sided procedural narratives introduced without the opportunity for clarification, exactly the type of record distortion that appellate courts warn against when considering fairness and completeness.

When a court does not affirmatively resolve properly submitted and docketed requests tied to dispositive outcomes, it effectuates a constructive denial, silently foreclosing consideration while avoiding the procedural clarity required for meaningful review. Here, omission not only prejudices Plaintiff but creates uncertainty as to whether key evidence was evaluated or simply bypassed.

Accordingly, the Court should therefore:

1. Grant Plaintiff's motion for leave to file the clarifying surreply,
2. Disregard Docket 327's misdirected and procedurally flawed opposition, and
3. Proceed to evaluate the proposed Fifth Amended Complaint under the proper Rule 15(a)(2) and Rule 59(e) standards—standards Defendants pointedly refuse to acknowledge.

In the alternative, should the Court decline to grant leave, the Plaintiff preserves all rights under Federal Rule of Civil Procedure 12(d), Rule 59(e) to amend the judgment on grounds of newly discovered evidence, clear legal error, or the need to prevent manifest injustice (*Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011)). Additionally, Plaintiff preserves rights under Fed. R. Civ. P. 60(b), particularly subsections (1), (2), and (6), based on the Court's failure to acknowledge dispositive evidence properly submitted before judgment was reaffirmed.

Respectfully submitted,

Dated: June 13, 2025

Todd R. G. Hill
Plaintiff, Pro Se

STATEMENT OF COMPLIANCE WITH LOCAL RULE 11-6.1

The undersigned party certifies that this brief contains 3,002 words, which complies with the 7,000-word limit of L.R. 11-6.1.

Respectfully submitted,

June 13, 2025
Todd R.G. Hill
Plaintiff, in Propria Persona

Plaintiff's Proof of Service

This section confirms that all necessary documents will be properly served pursuant to L.R. 5-3.2.1 Service. This document will be/has been electronically filed. The electronic filing of a document causes a "Notice of Electronic Filing" ("NEF") to be automatically generated by the CM/ECF System and sent by e-mail to: (1) all attorneys who have appeared in the case in this Court and (2) all pro se parties who have been granted leave to file documents electronically in the case pursuant to L.R. 5-4.1.1 or who have appeared in the case and are registered to receive service through the CM/ECF System pursuant to L.R. 5-3.2.2. Unless service is governed by Fed. R. Civ. P. 4 or L.R. 79-5.3, service with this electronic NEF will constitute service pursuant to the Federal Rules of Civil Procedure, and the NEF itself will constitute proof of service for individuals so served.

Respectfully submitted,

June 13, 2025
Todd R.G. Hill
Plaintiff, in Propria Persona